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THE LEGAL TENDER CASES. WHAT THEY DECIDE.

It is purposed in the following pages to give a brief statement of the facts and a summary of the opinion of the court in each of those causes which have been adjudicated in the Supreme Court of the United States, known as the "Legal Tender Cases," so far as the constitutionality of the "legal tender clause" of the "currency Acts" is involved. A similar statement and summary will also be given of each of two other causes which bear a close relation to the former, and are supposed to reflect the history of the *animus* of the court upon this subject.

Some of the legal tender cases, in which no new principle was decided, and still other causes in which the same subject was argued, but which were decided on other grounds, and not thought valuable in our present view of the matter, are purposely excluded from consideration.

As is well known, the first act of Congress which made treasury notes a legal tender, was that of February 25th 1862, and the clause so constituting them was couched in the following terms: [these notes] "shall be receivable in payment of all taxes, internal duties, excises, debts and demands of every kind due to the United States, except duties on imports, and of all claims and demands against the United States, of every kind whatsoever, except for interest upon bonds and notes, which shall be paid in coin: *and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid.*"

In the subsequent acts on this subject, substantially the same terms were used.

I. The first case touching upon the constitutionality of the act was that of the *Bank of New York v. The Supervisors*, 7 Wallace 26, brought up from the Court of Appeals of New York. There had been assessed against the bank by the state authorities certain taxes upon the capital stock of the bank, the payment of which seems to have been made under protest, upon the ground that though nominally imposed upon its capital, the tax was in fact upon the bonds and obligations of the United States, in which the bank's capital was invested, and which under the Constitution and laws of the United States, it was claimed, were exempt from state taxation. After the position of the bank, in this regard, had been sustained by the Supreme Court of the United States, the legislature of the state of New York provided by law for refunding to the bank such taxes as had been paid by it when imposed on its *capital* invested in *securities* of the United States exempt by law from state taxation. The supervisors whose duty it was to audit the claims of the bank, refused to allow the claim for exemption from tax of the legal tender notes, and the Court of Appeals of the state of New York supported the supervisors in that refusal.

The opinion of the court was delivered by the Chief Justice, who said: "That these notes were issued under the authority of the United States, and as a means to ends entirely within the constitutional power of the government, was not seriously questioned upon the argument. Apart from the quality of legal tender impressed upon them by Act of Congress, of which we now say nothing, their circulation as currency depends on the extent to which they are received in payment, on the quantity in circulation, and on the credit given to the promises they bear. In these respects they resemble the bank notes formerly issued as currency. * * It is clear that these notes are obligations of the United States. Their name imports obligation. * * The dollar note is an engagement to pay a dollar, and the dollar intended is the coined dollar of the United States."

The court then go on to show that Congress has provided for the exemption of the notes from state taxation and say: "Our conclusion is that United States notes are exempt; and at the time the New York statutes were enacted were exempt from taxation by or under state authority."

II. The next case was that of *Lane County v. Oregon*, 7 Wallace 71, the facts being in substance as follows:

After the passage of the Legal Tender Act the legislature of Oregon passed a statute, enacting that "the sheriff shall pay over to the county treasurer the full amount of the *state and school taxes in gold and silver coin*, and that the several county treasurers shall pay over to the state treasurer the *state tax in gold and silver coin*."

The state of Oregon, in April 1865, filed a complaint against Lane county to recover \$5460.96, *in gold and silver coin*, alleged to be due the state.

To this complaint an answer was put in by the county, alleging a tender in *United States notes*. A demurrer to the answer was sustained by the Supreme Court of the state, and the judgment was affirmed by the Supreme Court of the United States, on the ground that the clause making United States notes a legal tender for payment of *debts*, had no reference to *taxes* imposed by state authority.

III. *Bronson v. Rodes*, 7 Wallace 229, next claimed the attention of the court; the case being substantially thus: Bronson, acting as executor, in December 1851, had taken a mortgage on certain land in Erie county, New York, for \$1400, payable *in gold and silver coin*, lawful money of the United States, which Rodes had afterward assumed to pay. In January, 1865, Rodes tendered Bronson United States notes to the amount of \$1507, a sum nominally equal to the principal and interest due. At the time of tender one dollar in coin was equivalent in market value to two dollars and a quarter in "Legal Tenders." The tender being refused, the notes were deposited in bank to Bronson's credit, and a bill was filed by Rodes to compel Bronson to satisfy the mortgage. The Court of Appeals of New York having decreed the satisfaction, the case was brought to the Supreme Court of the United States for review.

The Chief Justice delivered the opinion of the court, and in it he adverted to the fact that prior to 1837 the gold and silver coins of the United States were made lawful tender in payments *according to their respective [actual] weight—if of full weight, at their declared value, and if of less, at proportionate values*. But when the Act of 1837 was passed, the methods and machinery of coinage had become so nearly perfect that the deviation in the

weight of the respective pieces from their standard had become so slight, that Congress provided that the gold and silver coin of the United States should be a legal tender in all payments, according to their respective nominal values. This course of legislation was thought to recognise the fact "accepted by all men" that gold and silver possessed an intrinsic value, and as a circulating medium are the only proper measure of value. "A contract to pay a certain number of dollars in gold or silver coin was said, therefore, to be in legal import, nothing else than an agreement to deliver a certain weight of standard gold or silver, to be ascertained by a count of coins, each to be certified to contain a definite proportion of that weight." He did not, therefore, suppose that it was the purpose of the coining acts to enforce satisfaction of a contract for bullion or gold dollars by a tender of depreciated currency, equivalent only in nominal count to the real value of the bullion or the coined dollars.

He did not think it necessary to examine the question whether the clauses of the currency acts, making United States notes a legal tender are warranted by the Constitution ; but assuming that they are so warranted, and assuming that engagements to pay coined dollars may be regarded as contracts to pay *money* rather than as contracts to deliver a *certain weight of standard gold*, he proceeded to inquire whether it would be maintained that a contract to pay coined money may be satisfied by a tender of United States notes.

He observed that the statutes authorizing coinage and making coin dollars a legal tender, had never been repealed, and concluded from this that there were two descriptions of money in use at the time of the tender in this case, both made legal tender in payments, and that contracts for either were equally sanctioned by law.

And he further argued that the currency acts themselves provided for payments in coin. Duties on imports were required to be paid in coin, and the merchant who has the duty to pay must contract for the coin in which to pay. And so the government may need coin to fulfil its obligations, and may find it convenient to contract for it, and these contracts could certainly not be satisfied with note dollars.

It was therefore held, "that express contracts to pay coined dollars can only be satisfied by the payment of coined dollars. That they are not debts which may be satisfied by the tender of United

States notes." And it was also determined, that when contracts made payable in coin are sued upon, judgments may be entered for coined dollars and parts of dollars; and where contracts have been made payable in dollars generally without specifying in what description of currency payment is to be made, judgment may be entered generally without such specification.

In this *judgment* concurred all the justices except Mr Justice MILLER; but Mr. Justice DAVIS and Mr. Justice SWAYNE *expressly* limited their concurrence in the opinion to its application to the particular case decided.

IV. The next case was that of *Butler v. Horwitz*, 7 Wallace 258. A rent of 15*l.* per year had been reserved in 1791 on a leasehold renewable forever, granted on a lot of ground in Baltimore, in current money of Maryland, payable in English golden guineas of a stated weight, and other gold and silver at their then established weight. On January 1st 1866, Horwitz was the owner of the rent, and Butler of the leasehold interest in the lot, the latter being liable of course to pay the rent. It was agreed that 15*l.* was equal to \$40 in gold and silver, and Butler tendered to Horwitz the year's rent (\$40), then due, in *currency*. Horwitz refused to accept it, and brought suit for the *value of the gold in currency*, \$1 in gold being then worth \$1.45 in currency, and the court below entered judgment in accordance with his demand for \$59.71. Butler carried the case to the Supreme Court of the United States for review, and the Chief Justice delivered the opinion of the court, saying that the principles which determined the case of *Bronson v. Rodes* would govern in this case. He observed that the judgment of the court below was rendered as the legal result of two propositions: [1] That the covenant in the lease required the delivery of a certain amount of gold and silver in payment of the rent, and [2] That the damages for the non-performance must be assessed in the legal tender currency.

Of the first proposition he approved, but thought the second erroneous.

Damages he remarked, for a breach of contract must be assessed in lawful money: that is to say, in money declared to be a legal tender in payment, by a law made in pursuance of the Constitution of the United States.

Not deeming the constitutionality of the legal tender acts involved in the case in hand, he observed that there were two kinds of money

in use under the Acts of Congress in which damages might be assessed. "But the obvious intention in contracts for payment or delivery of coin or bullion, to provide against fluctuations in the medium of payment, warranted the inference that it was the understanding of the parties that such contracts should be satisfied, whether before or after judgment, only by tender of coin; while the absence of any express stipulation, as to description, in contracts for payment in money generally, warrants the opposite inference of an understanding between parties that such contract may be satisfied before or after judgment, by the tender of lawful money." It was therefore *held* that the damages should have been assessed, and judgment rendered in this case for the sum agreed to be due, with interest, *in gold and silver coin with costs*.

In this judgment all the justices concurred except Mr. Justice MILLER, who dissented, holding that the agreement was for guineas as a commodity, and that the judgment of the court below was right.

V. *Willard v. Tayloe*, 8 Wallace 557. This case has not been generally considered one of the legal tender cases, but for the reasons above given we give a summary of it here.

Willard, the proprietor of "Willard's Hotel," in Washington city, leased from Tayloe, "The Mansion House," adjoining the former hotel, for the period of ten years from May 1st 1854, at a rent of \$1200 per year, and it was covenanted in the lease that the lessor should have the option of purchasing the premises at any time before the expiration of the term, for the sum of \$22,500, nothing being said about gold or currency. In April 1864, two weeks before the period allowed Willard for the exercise of his option had expired (the property having greatly increased in currency value since 1854), he gave notice of his intention to purchase, and tendered the price in accordance with the agreed terms in United States notes, a gold dollar being then worth about one dollar and eighty cents in currency. The tender was refused, and Willard filed his bill in the Supreme Court of the District of Columbia, praying a conveyance to him of the property.

This court dismissed the bill and the case was carried to the Supreme Court of the United States.

Mr. Justice FIELD delivered the opinion of the court. He said that when a contract was fair in its terms when made, it was the usual practice of courts of equity to enforce its specific execution

* * but it was not the invariable practice. This form of relief is not a matter of absolute right to either party, but is a matter resting in the discretion of the court. * * In general it may be said that the specific relief will be granted when it is apparent from a view of all the circumstances of the particular case, that it will subserve the ends of justice * * and not when it will work injustice or hardships to either party. If, however, the specific relief can be granted upon conditions which will relieve the case of hardship and injustice, that will be done.

Finding that Willard had used good faith in tendering what was currently received as money and so declared to be by statute; and had submitted to the court to say what he should pay for the conveyance, it was said that the only question remaining was "upon what terms should the decree be made." It was observed, that as gold and silver was the only currency recognised by law as the making of the contract, and was all that the parties had in contemplation, it would be inequitable to compel a conveyance for a sum in notes worth in the market, when tendered, only a little more than one-half of the stipulated price in coin. And it was therefore decreed that the conveyance should be made upon the payment of the stipulated price in gold and silver coin. In this judgment the Chief Justice and all the associate justices concurred, but the Chief Justice and Mr. Justice NELSON, expressed their inability to yield their assent to the argument by which it was supported.

VI. *Hepburn v. Griswold*, 8 Wallace 604, next claimed the attention of the court.

Mrs. Hepburn in 1860 made a promissory note, by which she agreed to pay to Henry Griswold, on the 20th day of February 1862, \$11,250. Five days after the note fell due, as will be observed, the first legal tender act was passed. The note remaining unpaid suit was brought upon it in 1864, when Mrs. Hepburn tendered \$12,720, the nominal amount due, with costs in legal tender notes. The tender was refused, and the Court of Appeals of Kentucky held that the debt had not been thereby discharged; and of course that a tender of the nominal amount due in legal tender notes was not payment of a debt contracted *before* the passage of the legal tender act.

The case was then brought by Mrs. Hepburn to the Supreme Court of the United States. The Chief Justice delivered the opinion of the court. He observed that the court was now to

determine whether the term "debts, public and private," embraced contracts made before as well as after the date of the acts in question. Remarking that Congress did intend that the act should apply to contracts made before its passage, he passed to the question,

Did Congress have the power to make these notes a legal tender in payment of debts, which, when contracted, were payable only in gold and silver?

It had not been contended in argument that there was any express grant of legislative power in the Constitution to make any description of credit currency a legal tender in payment of debts. Can it then be done in the exercise of an implied power? The rule for the exercise of a power as implied was approved as stated by Chief Justice MARSHALL in *McCullough v. The State of Maryland*, in these words, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

It was then regarded as settled that the powers impliedly granted by the Constitution were such as were "not absolutely necessary, indeed, but appropriate, plainly adapted to constitutional and legitimate ends; laws not prohibited, but consistent with the letter and spirit of the Constitution; laws really calculated to effect objects intrusted to the government."

Was, then, the clause which makes United States notes a legal tender for debts contracted prior to its enactment, a law of the description stated in the rule?

The power to establish a standard of value, to determine what shall be lawful money, is of necessity a governmental power. But could the power to impart these qualities to those notes when offered in discharge of pre-existing debts be derived from the coinage power or from any other power expressly given? It was not the power to coin money, or a plainly adapted means to the exercise of that power, or to the power to regulate the value of coined money of the United States or of foreign coin. Nor is the power to make notes a legal tender the same as the power to issue notes to be used as currency. The court had recently held that Congress, as incidental to other powers, could emit bills of credit or notes, but it expressly declared that that decision concluded nothing upon the subject of legal tenders. The history of the country

showed a well-recognised distinction between these two powers. The states had always been held to have the power to authorize the issue of bills for circulation by banks or individuals, but they were expressly prohibited from making anything but gold and silver a legal tender; and this seemed decisive of the point that the power to issue notes and that to make them a legal tender are not the same power.

But it had been argued that the creation of legal tenders was an appropriate and plainly adapted means to the exercise of the power to carry on war, to regulate commerce, and to borrow money. But this argument proved too much, as almost every exercise of power by the government involved the expenditure of money, and to infer from this the power to impress the quality of legal tender upon its obligations, would be to carry the doctrine of implied powers far beyond any extent hitherto given to it. It asserts that, whatever, *in any degree*, provides an aid within the scope of an express power may be done. And this doctrine would make Congress absolute in the choice of means to an end, whether plainly adapted or not, and change the nature of the government, by confusing the boundaries of its executive and judicial with its legislative authority.

Considering then the history of notes or bills of credit both as legal tenders and without that quality, the court were of opinion that the legal tender quality was not an essential part of the vitality of such notes, and therefore * * “that an act making mere promises to pay dollars a legal tender in payment of debts previously contracted, is not a means appropriate, plainly adapted, really calculated to carry into effect any express power vested in Congress; that such an act is inconsistent with the spirit of the Constitution; that it is prohibited by the Constitution.”

In this opinion concurred Justices NELSON, CLIFFORD and FIELD; and Mr. Justice GRIER also concurred therein when the cause was decided in conference, and when the opinion of the Chief Justice was directed to be read; but the time of its delivery having been postponed to accommodate the minority of the court, the resignation of the last-named justice had taken effect when it was read and filed.

Justices MILLER, SWAYNE and DAVIS, dissented.

VII. *Parker v. Davis* and *Knox v. Lee*, 12 Wallace 457. These causes were argued and decided together. The case in the first was

as follows : Before the legal tender acts were passed Parker sold Davis a lot of ground for a given sum of money, which the former refused on demand to convey. Davis, thereupon (also before the legal tender acts were passed) filed a bill in equity to compel performance. The Supreme Court of Massachusetts, in February 1867, decided that upon Davis's paying into court a certain sum of money in legal tender notes, Parker should execute a deed to him. Davis paid in the money, but Parker appealed from the decree.

The facts in *Knox v. Lee*, so far as they affect the question of legal tender, were as follows : Mrs. Lee, a resident of Pennsylvania, owned a flock of sheep, which she left in Texas at the outbreak of the rebellion, and they were confiscated and sold by the confederate authorities in March 1863, as the property of an "alien enemy." The sheep were bought by Knox, against whom Mrs. Lee, after the suppression of the rebellion, brought suit for taking and converting them. The court, in charging the jury, said that in assessing damages the jury would recollect that the judgment to be entered on their verdict could be discharged by paying the amount in legal tender notes. Of this instruction the defendant complained, because the jury had been led by it, as he alleged, to improperly increase the damages, and he claimed that as United States notes had been made a legal tender by law, there was no difference in value between a dollar note and a coin dollar.

The court, by a majority of one, ordered : That in addition to the regular counsel engaged in the causes, Mr. *Potter* and the Attorney-General (Mr. *Akerman*), be heard upon the following questions :

1. Are the legal tender acts constitutional as to contracts made before their passage ?

2. Are they valid as applied to transactions since their passage ?

Mr. Justice STRONG delivered the opinion of the court. He observed that the question was : Could Congress give treasury notes the character and quality of *money* ?

He said it had always been the rule to presume that Congress have not transcended their power until the contrary was clearly shown, and that the language of constitutions, as well as of wills, contracts and statutes, was to be construed so as to effect the general purpose of the instrument ; and, indeed, that, by reason of the general terms of the Constitution, there was the greater ne-

cessity for the application of this rule in construing it. Thus the power to collect taxes, to support armies and maintain a navy, are instruments for a paramount object, which was to establish a government sovereign within its sphere, and with a capacity for self-preservation. And so of those powers granted in the general terms to "make all laws necessary and proper," to carry into execution the specified powers.

And it is not indispensable to the exercise of a power that it should be specified or clearly and directly traceable to some one of the powers specified in the Constitution. Its existence may be deduced from more than one of the substantive powers, or all of them combined. That such was the understanding of the people was shown by the amendments, which were restrictions on powers not expressly granted nor impliable from any one other power expressly granted. And Congress had frequently exercised such "resulting powers;" among them that of passing a penal code, in which provision is made for the punishment of a large class of crimes other than those mentioned in the Constitution, and some of the punishments prescribed are manifestly not in aid of any single substantive power; and this exercise of power was sustained by the Supreme Court. Reviewing the history of the government upon this point he referred to the provision made under the power to establish post-offices and post-roads, for carrying the mails, punishing theft of letters, and transporting the mails to foreign countries; under the power to regulate commerce, for the improvement of harbors, the erection of light-houses, the registry, enrolment and construction of ships, and the passage of a code for the government of seamen. It was also said that under the same powers and other powers over the revenue and the currency of the country, for the convenience of the treasury and internal commerce, the United States Bank, a private corporation, was created; and to its capital the government subscribed one-fifth of the stock. Its incorporation was a constitutional exercise of congressional power for no other reason than that it was deemed to be a convenient instrument or means for accomplishing one or more of the ends for which the government was established. In *Fisher v. Blight*, the Supreme Court had determined that Congress must possess the choice of means and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution.

And in *McCulloch v. Maryland*, it was finally settled that the necessity referred to in the power granted to pass laws, "necessary and proper" for the execution of the powers expressly granted, was not to be understood to be an absolute necessity ; but that the legislature must have that discretion in the choice of means in executing a power which will enable it to perform its duty in the the manner most beneficial to the people. It was there said that when an Act of Congress "is not prohibited and is really calculated to effect any of the objects intrusted to the government, to undertake in the Supreme Court to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department and to tread on legislative ground."

Before the court, therefore, could hold the Legal Tender Acts unconstitutional, it must be convinced they were not appropriate means, in any degree, or means conducive to the execution of any or all of the powers of Congress, or of the government, or it must hold that they were prohibited. And in determining their appropriateness, the time of their enactment was an important consideration.

If nothing else, it was asked, could have supplied the needs of the treasury and saved the government, while the Legal Tender Acts would, could their constitutionality be denied? That they did work such results, it was said, could not be disputed.

But if something else could have done the same, it does not impair the argument. Congress had the choice of means appropriate to a legitimate end, and the court could not inquire into the degree of their necessity or appropriateness.

It had not been claimed, it was said, that the exercise of this power was expressly prohibited, but that the spirit of the Constitution was violated by it.

As to the grant of power to "coin money" being an implied prohibition to make that money which was not a subject of coinage, it was said that the principle on which this construction was contended for had not been recognised. In *United States v. Mari-gold*, 9 Howard 560, it had been held that an express power to punish a certain class of crimes, was not regarded as an objection to deducing authority to punish other crimes from another substantive and defined grant of power ; and a similar principle had been recognised in other decisions.

In answer to the argument that the spirit of the Constitution

was violated because these acts impaired the obligation of contracts, it was said that of course it related only to such contracts as existed before February 1862—when the first act was passed. But it was denied that the acts did impair the obligation of contracts; and also that Congress is prohibited from producing that effect.

As to the first proposition it was said that the contracts of parties simply involved the obligation to pay “money,” and that meant what should by law be recognised as money when the contract came to be performed. It was also maintained that Congress could indirectly impair the obligation of contracts; as by the passage of non-intercourse acts, declaring war, directing an embargo, and the like; and the right to produce this effect was not confined to the cases where the contract was impaired by the exercise of a power expressly granted. The power to direct an embargo was one of the auxiliary powers, held to be vested in Congress, though the effect of its exercise was to suspend many contracts, and render performance of others impossible. Contracts were, in fact, always subject, in a state of civil society, to the lawful exercise of the rightful authority of the government.¹

In regard to the acts infracting the clause of the Constitution which forbids the taking of private property for public use, it was said that the provision had always been understood as referring only to a direct appropriation, and not to consequential injuries resulting from the exercise of lawful power. A new tariff, a war or an embargo may entail loss or render valuable property almost valueless, and the reduction of the intrinsic value of the coin of the government had the effect to subject creditors to corresponding loss, but these effects did not make the laws causing them unconstitutional.

The court, therefore, held the acts constitutional as applied to contracts made either before or after their passage; and in so

¹ It may be remarked in this connection that Mr. *Potter* in his argument against the constitutionality of these acts on this ground, had said that he was not unmindful of the impression that prevailed in the profession that Congress could pass a law impairing the obligation of a contract. He contended, however, that the impression was traceable to an interlocutory remark of Mr. Justice WASHINGTON, in the Circuit Court in Philadelphia, in 1816, in reference to a grant by the government of a patent for an invention, and that it was a single instance of a casual observation, passing for years unaffirmed and unchallenged by all the great commentators upon the Constitution.

holding, overruled so much of *Hepburn v. Griswold*, as held the acts unwarranted by the Constitution, so far as they apply to contracts made before their enactment.

In this opinion concurred Justices CLIFFORD, SWAYNE, MILLER and BRADLEY. And the Chief Justice, with Justices NELSON, CLIFFORD and FIELD, dissented.

VIII. The next case was that of *Trebilcock v. Wilson et ux.*, 12 Wallace 687. The facts affecting the question of legal tender were as follows: In June 1861, Wilson gave to Trebilcock his note at one year for \$900, *payable in specie*, and he also delivered to Trebilcock a mortgage made by himself and wife as security for the debt. In February 1863, Wilson tendered the amount of the debt in legal tenders, which Trebilcock refused to receive. Wilson and wife then filed a bill in equity against Trebilcock to compel satisfaction of the mortgage.

Mr. Justice FIELD delivered the opinion of the court: saying that the terms *in specie* did not assimilate the note to an instrument in which the amount stated was payable in chattels; the terms *in specie* being descriptive of the kind of dollars in which the note was payable, both specie and currency dollars being recognised by law and usage among traders, merchants and bankers. The case was therefore brought within the decision of *Bronson v. Rodes*, and the debt could only be satisfied by the payment of coined dollars. The coinage acts were in force when the legal tender acts were passed, and not being repealed by them and they being held to be constitutional, we had, *according to that decision*, two kinds of money, essentially different in their nature but equally lawful.

In this opinion the Chief Justice and all the justices concurred, except Justices MILLER and BRADLEY, who dissented.

IX. The *Vaughan* and *Telegraph*, 14 Wallace 258. On the 7th of October 1864, O. & J. Lynch, of St. Timothy, Canada, shipped a cargo of barley on a canal boat for New York. In Canada, as is known, business is transacted on a specie basis and with a coinage corresponding with our own. The cargo was worth on that day at St. Timothy, \$2436 in gold, or at the then rate of depreciation, about \$4896.30 in legal tender notes—gold selling at that time at \$2.01. The boat with her cargo was sunk in the Hudson, by the joint negligence of the steamers, “*Vaughan*” and “*Telegraph*,” both of which were libelled by the consignees who had made ad-

vances on the cargo. The District Court of the United States at New York entered a decree on February 21st 1868, against both steamers, for the value of the barley in gold at St. Timothy, on the day of shipment, with interest, and assessed the damages at \$2924.20; *but the decree was not by its terms made payable in gold.* On appeal, the Circuit Court held that in order to give full indemnity to the libellants, the decree should have been for the value in legal tender notes (\$4896.30) of the \$2436 gold, and this court, on March 26th 1870, entered a decree for the \$4896.30 with interest; in all \$6515.51, with costs. One dollar in gold was at this date worth \$1.12 in legal tenders.

On appeal to the Supreme Court of the United States, Mr. Justice SWAYNE delivered the opinion of the Court, saying:

"Upon the rule of damages applied by both courts as respects the kind of currency in which the value of the barley was estimated, the libellants were entitled, upon the plainest principles of justice, to be paid in specie or its equivalent. The hardship arising from the decree before us is due entirely to the delay in its payment which has since occurred, and the change which time and circumstances have wrought in the value of the legal tender currency. The decree was right when rendered, and, being so, cannot now be disturbed. * * The decree in the particular consideration presents the same question which was decided by this court in the case of *Knox v. Lee.*"

In this judgment concurred, Justices NELSON, MILLER, DAVIS STRONG and BRADLEY.

The Chief Justice, with Justices CLIFFORD and FIELD, dissented.

In conclusion, then, it may be said that the law, as determined by the foregoing cases, is as follows:

1. In *The Bank v. The Supervisors*, it is decided that legal tender notes are obligations or securities of the United States, and are exempt from state taxation; and that they are not money in the same sense, as gold and silver coin of the United States is money.

2. In *Lane County v. Oregon*, it is decided that a state tax is not a "debt" within the meaning of the legal tender acts, and that where a state requires its taxes to be paid in coin they cannot be discharged by a tender of treasury notes.

3. In *Bronson v. Rodes*, it is decided that a debt created prior to the passage of the legal tender acts, and payable by the express terms of the contract, in *gold and silver coin*, lawful money of the

United States, cannot be satisfied by a tender of treasury notes nominally equal in amount to the debt, and that judgments on such contracts should be expressly entered for coined dollars and parts of dollars.

4. In *Butler v. Horwitz*, it is decided that where a contract, made before the passage of the legal tender acts, calls for a stated sum of money current in the state where the contract is made, and requires payment to be made in specified gold and silver coins, of a specified weight not of the United States coinage, the damages must be assessed in, and judgment rendered for, coined dollars and parts of dollars and not for dollars generally, by taking into account in assessing damages, the difference in market value between coin and currency dollars.

5. In *Willard v. Tayloe*, it is decided that where a contract was made before the passage of the legal tender acts, specific performance thereof will not be decreed upon the tender of the amount of the debt in treasury notes when such a decree would work inequity or injustice; but that upon the payment of the amount of the debt in coin, and the case is otherwise a proper one for such interposition by the court, specific performance will be decreed.

6. In *Hepburn v. Griswold*, it was decided that a contract made before the passage of the legal tender acts and solvable in dollars generally cannot be discharged in legal tender notes, nominally equal in amount to the debt, and that those acts are unconstitutional so far as they seek to make such notes a legal tender in discharge of free-existing debts.

7. In *Parker v. Davis*, it is decided that the legal tender acts are constitutional, as applied to pre-existing contracts, and *Hepburn v. Griswold* is overruled in this regard. And it also holds that specific performance of such engagements, when the case is otherwise a proper one for such interposition by the court, will be enforced. It does not appear in this case whether the court based its decree for specific performance upon the finding of the court below that such a decree would be equitable, or upon its own judgment to this effect, or upon other grounds.

8. In *Knox v. Lee* it is decided that it is not error to instruct the jury that in assessing damages against one for a tortious conversion of property after the passage of the legal tender acts, they will take the fact into account that the judgment on their verdict

will be solvable in treasury notes. And it is also held that the legal tender acts are constitutional as applied to transactions since their passage.

9. In *Trebilcock v. Wilson*, it is decided that a debt created before the passage of the legal tender acts, and solvable by express terms "in specie," cannot be discharged by the tender of the nominal amount due in treasury notes.

ISAAC S. SHARP,
Philadelphia.

RECENT AMERICAN DECISIONS.

Supreme Court of Illinois.

WALSH v. THE PEOPLE OF ILLINOIS.

A proposal by an officer to receive a bribe, though not bribery, is an indictable misdemeanor at common law.

THE defendant below was an alderman of the Common Council of the city of Chicago. As such he was indicted for a proposal made by himself to receive a bribe, to influence his action in the discharge of his duties.

The opinion of the Court was delivered by

THORNTON, J.—The indictment is in form an indictment at common law; and it is conceded that the statute has not created such an offence against an alderman. Our criminal code has made it an offence to propose or agree to receive a bribe on the part of certain officers, but an alderman is not, either in terms or by construction, included amongst them: Rev. 1845, p. 167, sec. 87. It is contended that the act charged does not fall within any of the common law definitions of bribery; that no precedent can be found for such an offence; and that as propositions to receive bribes have probably often been made, and as no case can be found in which they were regarded as criminal, the conclusion must follow that the offence charged is no offence. The weakness of the conclusion is in the assumption of a premise which may or may not be true. This particular phase of depravity may never before have been exhibited; and if it had been, a change might be so suddenly made by an acceptance of the offer, and a concurrence of the parties, as to constitute the offence of bribery, which consists in the